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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09.912.219	07 25 2001	Alvin Kershman	SK-3	6369

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BOULDER PATENT SERVICE INC
1021 GAPTER ROAD
BOULDER, CO 803032924

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11 05 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/912,219

Applicant(s)
Kershman et al

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 25, 2001
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statement(s) (PTO-1449; Paper No.(s)) 3
4. ☐ Interview Summary (PTO-413; Paper No. s)
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Other _____

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1. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Lines 1-2, what does applicant mean by "an outermost farinaceous layer defining one or more outermost surfaces"? How can one outermost layer defining more than one surfaces? It is not clear what is intended by the plurality of outermost surfaces. Also the body of the claim does not commensurate with the preamble. While claiming a method for producing a reheatable food product, there is no recitation of the step for producing the food product. The claim is not in proper Jepson claim format.

Claim 2 is vague and indefinite; it is not clear what applicant is claiming. Does the layer include all of the grains cited or just one and does the layer contain the grain or the coating contain the grains.

Claim 3 is vague and indefinite. What does applicant mean by resolidifying in a controlled way? How can the lipid be resolidified when it is still in a heating condition.

In claim 14, what does applicant mean by "major outermost surfaces"? What does the word "major" indicate?

In claim 23, the phrase "particular appearance" is not clear because it is not known what is included or excluded by such language.

Claim 26 has the same problem as claim 23.

Claim 28 has the same problem as claims 1 and 23.

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Claim 29 is vague and indefinite. It is not known what applicant is claiming. While line 1 recites an outermost major surface; line 2 recites a high solid fat index layer on each outermost major surfaces.

Claim 30 is vague and indefinite. Does the layer include all the grains or just one?

Claim 43 has the same problem as claim 23.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 1-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Partyka.

Partyka discloses a method of making a filled sandwich. The method comprises the steps of treating slices of bread with a thin layer of hydrocolloid on at least one surface of each slice of

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bread, placing a layer of sandwich filling to the treated surface of at least one of the bread slices, placing the slices in a face-to-face contact to form a sandwich. The sandwich may be directly heated from a frozen condition in a household toaster. The hydrocolloid acts to cause the sandwich filling to adhere to the bread slice so that the assembled sandwich may be heated in a vertical position without loss of filling. The hydrocolloid also lessens the tendency of the sandwich to curl. A light coating of suitable edible fat such as butter, margarine, salad oil or the like is applied to the surfaces. The sandwich may be grilled before freezing. (See columns 2-3)

Partyka does not disclose a high solid fat index lipid having the characteristics as claimed, the thickness and amount of the fat coating, a sealant comprising of flour and water and adding edible farinaceous particles to the coating.

Fats having varying solid fat index are commercially available. The solid fat index indicate the proportion of solids and liquids and fat with high solid fat index is more solid but has a waxy mouth feel. It would have been obvious to one skilled in the art to use any kind of fat depending on the function and taste desired. If the fat is applied more for the function of serving as a barrier to prevent moisture migration than for flavor, it would have been obvious to use the ones with high solid fat index because these will be more effective as barrier material because of the higher percent of solid. If the fat is applied for flavor, it would have been obvious to do the opposite. It would have been obvious vary the amount of coating to obtain varying thickness depending the flavor, taste and the function intended. For example, if it is desired to have a noticeable flavor of the fat coating, it would have been obvious to use more coating material to obtain a desired

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thickness which would give the most optimum flavor and taste. If the fat is to serve as barrier layer, it would have been obvious to determine the thickness which would give the most optimum protection. Partyka teaches a different sealant material; however, it is well known in the art to use flour as adhesive and it would have been obvious to use other alternative ingredients which are known to carry out the same function. The amount to be use depends on the quantity of product made and this can readily be determined by one skilled in the art. It would also have been obvious to add edible particles such as bread crumb to the coating fat to obtained a different texture and taste. This is well known in the art; for example, it is common to add bread crumb to the surface to many foods to obtain a crispy or crunchy taste.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bauman et al, Jouanneau et al and Wheeler et al all disclose toaster products.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

November 1, 2002

Lien Tran
PRIM
Group 1761